
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | File No. EB-02-PA-200 |
| |) | |
| Minority Business and Housing Development Inc. |) | NAL/Acct. No. 200332400003 |
| WYGG |) | |
| Uniondale, New York |) | FRN: 0007-5125-28 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 30, 2002

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Minority Business and Housing Development, Inc. ("Minority Business"), the licensee of radio station WYGG, has apparently violated Sections 11.35(a) and 73.1350(a) of the Commission's Rules (the "Rules").¹ These sections respectively, require that the station have installed an operational EAS system, and that the station operate in accordance with the terms of the station authorization. We conclude that Minority Business is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On February 20, 2002, the Philadelphia Office received information that Minority Business was operating station WYGG with an excessive antenna height. In response, the Philadelphia Office assigned an FCC agent to inspect the station. During the inspection on April 26, 2002, the FCC agent found that Minority Business had mounted WYGG's antenna on the roof of a 13-story building at 601 Bangs Avenue, Asbury Park, New Jersey at an overall height above ground level of 43.9 meters (144 feet). The station's license (File No. BLED-19990304KZ) authorizes Minority Business to operate WYGG at 517 Cookman Avenue, Asbury Park, New Jersey with an antenna height of 14 meters (45.9 feet) above ground level. The FCC agent also attempted to inspect WYGG's Emergency Alert System ("EAS") equipment. Mr. Rodrique Cole, the operator on duty, informed the FCC agent that Minority Business never installed EAS equipment at the station.

3. On May 30, 2002, the Philadelphia Office issued a Notice of Violation to Minority Business, for failing to install and operate EAS equipment and for exceeding the authorized antenna height of station in violation of the Rules.

¹ 47 C.F.R. §§ 11.35(a) and 73.1350(a).

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4. Because Minority Business did not file a response to the Notice of Violation, an FCC agent re-inspected station WYGG on July 8, 2002 to determine if the violations had been corrected. The agent found that Minority Business was still operating station WYGG from the roof of the building at 601 Bangs Avenue, Asbury Park, New Jersey, exceeding WYGG's authorized antenna height by 29.9 meters, and had not installed EAS equipment at the station. On July 24, 2002, the Philadelphia Office issued a second Notice of Violation to Minority Business for failing to install and operate EAS equipment and for exceeding the authorized antenna height of station in violation of the Rules.

5. By letter dated July 31, 2002, Minority Business submitted a response to the Notices of Violation. In the response, Minority Business acknowledged the violations and stated that it reduced WYGG's power from 100 to 50 watts as directed by its engineering consultant, Sterling Communications.² Minority Business also requested a three-month extension to install the EAS equipment because it was trying to raise the money for the purchase of the equipment.

6. By email dated August 9, 2002, Mr. James Price of Sterling Communications informed the Philadelphia Office that he filed an application for construction permit with the FCC on behalf of Minority Business, which proposed to operate station WYGG at 601 Bangs Avenue, Asbury Park, New Jersey with an antenna height of 43.9 meters above ground. Mr. Price also stated that he would file a request for Special Temporary Authority ("STA") with the FCC on behalf of Minority Business to operate WYGG at variance from the facilities authorized in the station's license until the construction permit was granted.

III. DISCUSSION

7. Section 11.35(a) of the Rules states that broadcast stations are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. On April 26, 2002 and July 8, 2002, Minority Business did not have installed and operational any EAS equipment at radio station WYGG.

8. Section 73.1350(a) of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. On April 26, 2002 and July 8, 2002, Minority Business operated WYGG with an antenna height that exceeded the station's authorized antenna height by 29.9 meters.

9. Based on the evidence before us, we find that Minority Business apparently willfully³ and

² When Minority Business increased WYGG's antenna height from 14 meters to 43.9 meters, Minority Business effectively extended WYGG's coverage area, as defined by the 60 dBμ contour. Sterling Communications directed Minority Business to reduce WYGG's effective radiated power ("ERP") from 100 Watts to 50 Watts to prevent the station's existing 60 dBμ contour from extending beyond its authorized 60 dBμ contour.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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repeatedly⁴ violated Sections 11.35(a) and 73.1350(a) of the Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amount for failure to install and operate EAS equipment at \$8,000, and for exceeding the authorized antenna height at \$5000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁶ (the "Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a thirteen thousand dollar (\$13,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷, and Sections 0.111, 0.311 and 1.80 of the Rules⁸, Minority Business and Housing Development, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for exceeding WYGG's authorized antenna height and failing to install and operate EAS equipment at station WYGG.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Minority Business and Housing Development, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332400003 and FRN: 0007-5125-28.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332400003 and FRN: 0007-5125-28.

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C § 503(b)(2)(D).

⁷ 47 U.S.C § 503(b)

⁸ 47 C.F.R. §§ 0.111 and 0.311.

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14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Minority Business and Housing Development, Inc., 612 Leonard Avenue, Uniondale, New York 11553.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

Attachment A – FCC’s List of Small Entities.

⁹ See 47 C.F.R. § 1.1914.